

## **REMARKS**

### ***Amendments to the Claims***

Claims 1-26 and 28, 30 and 31 are cancelled.

Claims 27 and 29 are pending in the instant application. Claims 27 and 29 are amended to state that there are four finger holes in the claimed massage device.

### ***Priority***

Applicant filed a certified copy of the 0330185.0 application on October 1, 2010, and submit that the claim for foreign priority is complete.

### ***Claim Objections***

The objections to claims 28, 30 and 31 are moot in view of the cancellation of these claims with this amendment.

### ***Claim Rejections – 35 USC § 112***

With the cancellation of claim 31, this rejection is now moot.

### ***Claim Rejections – 35 USC § 103***

**Claims 27, 28 and 31 are rejected under 35 USC § 103(a) as being unpatentable over McNair (US D233,703) in view of York (US 6,241,696) and Ferrier (US 2,806,470).**

Applicant respectfully disagrees that pending claim 27 is obvious based on the combination of McNair in view of York and Ferrier. In Applicant's view, this rejection of the claim is based on hindsight reconstruction gleaned from viewing Applicant's specification, figures and claims, and not on a reason with rationale underpinnings for combining McNair in view of York and Ferrier.

McNair, a design patent, is directed to a hand held electric massager. As such, the massage aspect of this device as an electric massager presumably would be in the vibration of it. Indeed, being a design patent, the McNair patent was granted based on the ornamental aspects of design, not functional or utilitarian aspects. The shape and function of the McNair device are distinctly different from the claimed invention. Applicant disagrees that there is an arched dome member

gradually arched yet sufficient flattened in nature to permit maximum contact with the body receiving the massage from the device. Applicant also disagrees that the overall shape of McNair's device is an isosceles trapezoid shape. Applicant further disagrees that the portion of McNair's device in contact with the body is slightly longer than the hand grip.

To overcome the deficiencies of McNair, York is cited as having an arched dome member with a longer length than the hand grip and having a generally isosceles trapezoid shape overall.

First, there is no reason why one of ordinary skill in the art would modify the electrical device of McNair with features of York. York is a manual hand held massage implement with a circular, rotating balls that contact the body receiving the massage. The working premise on using the rotating balls in York is that the user can roll the balls up and down or from side to side on a given area to produce a 'massage effect.'

Ferrier is cited for its showing of finger holes in a massage apparatus. The Ferrier massage apparatus is designed to envelope a body part, such as a leg, with an elastic diaphragm and applying compression with both hands holding onto the apparatus. Figure 3 of Ferrier shows this massage apparatus in use over a person's leg. Ferrier's apparatus has multiple finger holes for the fingers of both hands, including the thumbs. While the Ferrier apparatus shows finger holes, there is no reason why one of ordinary skill in the art would look to the Ferrier device to modify McNair or York. The extensive amount of modification that would be needed is not suggested in the art cited by the Examiner, and is based on the impermissible hindsight reconstruction in view of Applicant's specification, figures, and pending claims.

For these reasons, the Examiner is requested to withdraw this rejection.

**Claims 29 and 30 are rejected under 35 USC 103(a) as being unpatentable over McNair (US D233,703) in view of York (US 6,241,696), Ferrier (US 2,806,470) and Back (US D408,543).**

Applicant respectfully disagrees that pending claim 29 is obvious based on the combination of McNair in view of York, Ferrier and Back. The combination of McNair, York and Ferrier are discussed above and are distinguishable from claim 29 for the same reasons as for claim 27. Claim

29 includes the feature that the bottom portion of the hand grip is concave. Back, a design patent, is cited by the Examiner for showing a hand-held massager with a concave hand grip. Applicant disagrees that the hand grip of Back is concave. Instead, as seen in Figure 1 of Back, the hand grip would be called a "pistol grip" with a notch that orients the hand in a vertical orientation. While there is a concave portion in the pistol grip of Back's massager, one of skill in the art would not look to Back, nor substitute its pistol grip hand grip

***Conclusion***

In view of the above amendments to the claims and the comments on the cited references, Applicant believes the pending application is in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner issue a Notice of Allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 08-0219, under Order No. 2204884.00120US1 from which the undersigned is authorized to draw.

Respectfully submitted,

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